IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 17TH AUGUST 2006 / 26TH SRAVANA 1928

WP(C).No. 9229 of 2006(W)

PETITIONERS:
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1. **V.KRISHNA SHENOY, LAKSHMI MACHINE WORKS, P.N.PALAYAM, NOW RESIDING AT KOTTUKULANGARA, KAMAL NIVAS, THIRUMALA BHAGAM P.O., CHERTHALA.**

2. **V.V.CHANDRAMATHI BAI, D/O.LATE VASUDEVAVADHYAR, KAMAL NIVAS, THIRUMALA BHAGOM P.O., CHERTHALA.**

BY ADV. SRI. V.L. SHENOY

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY DISTRICT COLLECTOR, ALAPPUZHA.**

2. **THE SPECIAL TAHSILDAR, (LAND ACQUISITION), ALAPPUZHA.**

BY GOVERNMENT PLEADER SRI. MOHAN C. MENON.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/08/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. HEMA, J.

W.P.(C). No. 9229 OF 2006

Dated this the 17th day of August, 2006.

J U D G M E N T

This petition is filed to quash an award passed by the second respondent under the Land Acquisition Act. The first petitioner obtained title and possession over an extent of property involved in the land acquisition proceedings and he obtained possession of the property also, through court, after a long legal battle which stood over a period of 34 years. The second petitioner is his wife who has also substantial interest in the property which is the subject matter of the acquisition notified under Section 4(1) of the Act.

2. The grievance of the petitioners is that they were not heard before an award is passed. Since the authorities failed to issue notice and give an opportunity of hearing to the petitioners, first petitioner filed a Writ Petition No. 11737/2005 before this court and as per judgment dated 04.11.2005, the following order was passed.

> "Hence, I direct that, if the writ petitioner was not so far heard, he or his counsel, may be heard and the 5th respondent shall thereafter make a report in respect of his property, notified under Section 4(1) of the Act to the Commissioner of the Land Revenue, as contemplated under Section 5A of the Act. The Commissioner of Land Revenue, thereafter, shall dispose of the same, by taking a decision, under Section 6 of the Act as well as Rules thereunder. The said exercise, as stated above, shall be contemplated within three months from the date of production of a copy of this judgment, before the 5th respondent, Special Tahsildar (Land Acquisition).

> In the above facts and circumstances, I find that the prayer of the writ petitioner to quash Ext. P15 is without any basis, and therefore, the same is rejected".

3. Despite this direction, it is submitted that the first petitioner was not heard, but award was passed in respect of the disputed property which is covered by the notification under Section 4(1) of the Act. Since there was a threat of dispossession, a stay was granted by this court which restrains the respondents from dispossessing the possession from the disputed property. In spite of the said direction, the petitioners were allegedly dispossessed from the property. Contempt proceedings were initiated as C.C (C) No. 519/2006 by the petitioners. In the said proceedings, the third respondent filed a counter affidavit as well as a memo.

4. At the time of hearing, learned Government Pleader, however, admitted that petitioners were dispossessed and also conceded that some illegality was committed. He tried to explain under which circumstance this happened. It was also submitted that every step was taken by the respondent to compensate the petitioners for the error committed and that the authorities genuinely regret for the mistake committed by them. Steps were also taken to settle the matter between the parties. Ultimately, it was decided that the petitioners will be put in possession of the property since the possession was taken illegally.

5. In the above circumstances, it is clear that the award passed is illegal. It was passed in violation of the specific direction in Exhibits P1 and P3 judgments of this court. Possession was also taken of in violation of direction given by this court. In the above circumstances, the award is liable to be set aside. Learned Government Pleader submitted that a memo was filed dated 03.07.2006 by the District Collector, Alappuzha for protecting the interest of the writ petitioners and that those may be recorded in the judgment. The suggestions made in the said memo are as follows.

> "1. The first petitioner has a case that he was not heard before the Award was passed. The landowners will be heard in the Section 5A enquiry and in the Award enquiry.
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> 2. The second petitioner has a case that her right of way has not been protected. For this, it is suggested that a 4 metre wide road will be provided through the northern and western margin of the LA property, touching the land of the second petitioner. This road will be included in the Award and compensation given.
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> 3. Status-quo will be maintained till a new Award is passed.
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> 4. The first petitioner has a case that even though an extent of 60 ½ cents belong to the landowners, a small extent has been given a go-by in the acquisition. To protect this issue, it has been suggested that a re-verification by the Survey Team will be done. Thus, an Award will be passed for the full extent of 60 ½ cents aforesaid".

In the light of the suggestions made in the memo which is quoted above, I find that the writ petition can be disposed of recording these suggestions, since those will protect the interest of the petitioners.

In the result, the award passed is set aside and the memo dated 03.07.2006 is recorded and the matter is directed to be disposed of by the respondents-authorities in accordance with the suggestions made in the memo which are recorded in the judgment.

This petition is allowed.

K. HEMA, JUDGE

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